

§ 21.4251

38 CFR Ch. I (7–1–03 Edition)

(2) The Director, Education Service may approve—

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapters 30, 32, 35, or 36 offered by a school located in the Canal Zone, Guam or Samoa;

(Authority: 10 U.S.C. 16136, 38 U.S.C. 3034, 3241, 3672)

(iii) Except as provided in § 21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36; and

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of Title 29 U.S.C. as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State.

(Authority: 38 U.S.C. 3241, 3476, 3523, 3672(b), 3672(c))

CROSS REFERENCE: *State approving agencies.* See § 21.4150(e).

[31 FR 6774, May 6, 1966, as amended at 35 FR 9816, June 16, 1970; 41 FR 30640, July 26, 1976; 44 FR 54707, Sept. 21, 1979; 48 FR 37990, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 62 FR 55760, Oct. 28, 1997]

§ 21.4251 Minimum period of operation requirement for educational institutions.

(a) *Definitions.* The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control.* The term *control* (including the term *controlling*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership

of voting securities, by contract, or otherwise.

(2) *Person.* The term *person* means an individual, corporation, partnership, or other legal entity.

(Authority: 38 U.S.C. 3680A(e))

(b) *Some educational institutions must be in operation for 2 years.* Except as provided in paragraph (c) of this section, when a proprietary educational institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution—

(1) Has been operating for less than 2 years;

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution, after such change or move, has been in operation for at least 2 years.

(Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the 2-year operation requirement.* Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that—

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for 2 years.* VA will consider, for the purposes of paragraph (b)

Department of Veterans Affairs

§21.4251

of this section, that a proprietary educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution)—

(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and

(2) Has offered courses continuously for at least 24 months inclusive of normal vacation or holiday periods, or periods when the institution is closed temporarily due to a natural disaster that directly affected the institution or the institution's students.

(Authority: 38 U.S.C. 3680A(e) and (g))

(e) *Move outside the same general locality.* A proprietary educational institution (or a branch or extension thereof) will be deemed to have moved to a location outside the same general locality of the original location when the new location is beyond normal commuting distance of the original location, i.e., 55 miles or more from the original location.

(Authority: 38 U.S.C. 3680A(e))

(f) *Change of ownership.* (1) A change of ownership of a proprietary educational institution occurs when—

(i) A person acquires operational management and/or control of the proprietary educational institution and its educational activities; or

(ii) A person ceases to have operational management and/or control of the proprietary educational institution and its educational activities.

(2) Transactions that may cause a change of ownership include, but are not limited to the following:

(i) The sale of the educational institution;

(ii) The transfer of the controlling interest of stock of the educational institution or its parent corporation;

(iii) The merger of 2 or more educational institutions; and

(iv) The division of one educational institution into 2 or more educational institutions.

(3) VA considers that a change in ownership of an educational institution does not include a transfer of ownership or control of the institution, upon the retirement or death of the owner, to:

(i) The owner's parent, sibling, spouse, child, spouse's parent or sibling, or sibling's or child's spouse; or

(ii) An individual with an ownership interest in the institution who has been involved in management of the institution for at least 2 years preceding the transfer.

(Authority: 38 U.S.C. 3680A(e))

(g) *Substantially the same faculty, student body, and courses.* VA will determine whether a proprietary educational institution has substantially the same faculty, student body, and courses following a change of ownership or move outside the same general locality by applying the provisions of this paragraph.

(1) VA will consider that the faculty remains substantially the same in an educational institution when faculty members who teach a majority of the courses after the move or change in ownership, were so employed by the educational institution before the move or change in ownership.

(2) VA will consider that the courses remain substantially the same at an educational institution when:

(i) Faculty use the same instructional methods during the term, quarter, or semester after the move or change in ownership as were used before the move or change in ownership; and

(ii) The courses offered after the move or change in ownership lead to the same educational objectives as did the courses offered before the move or change in ownership.

(3) VA considers that the student body remains substantially the same at an educational institution when, except for those students who have graduated, all, or a majority of the students enrolled in the educational institution on the last day of classes before the move or change in ownership are

§ 21.4252

also enrolled in the educational institution after the move or change in ownership.

(Authority: 38 U.S.C. 3680A(e) and (f)(1))
[65 FR 81741, Dec. 27, 2000]

§ 21.4252 Courses precluded.

(a) *Bartending and personality development.* Enrollment will not be approved in any bartending or personality development course.

(b) *Avocational and recreational.* Enrollment will not be approved in any course which is avocational or recreational in character or the advertising for which contains significant avocational or recreational themes. The courses identified in paragraphs (b)(1), (2), and (3) of this section are presumed to be avocational or recreational in character and require justification for their pursuit.

(1) Any photography course or entertainment course, or

(2) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective, or

(3) Any other type of course which the Department of Veterans Affairs determines to be avocational or recreational.

(Authority: 38 U.S.C. 3523(a), 3680A(b))

(4) To overcome the presumption that a course is avocational or recreational in character, the veteran or eligible person will be required to establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(c) *Flight training.* The Department of Veterans Affairs may approve an enrollment in any of the following types of courses of flight training if an institution of higher learning offers the course for credit toward the standard college degree the veteran or eligible

38 CFR Ch. I (7–1–03 Edition)

person is pursuing. The Department of Veterans Affairs otherwise will not approve an enrollment in:

(1) A course of flight training to obtain a private pilot's license or equivalent level training; or

(2) Any course of flight training under Chapter 35.

(Authority: 10 U.S.C. 16131(g); 38 U.S.C. 3034(d), 3241(b), 3523(b), 3680A(b))

(d) *Courses by radio.* Enrollment in such courses will not be approved.

(e) *Correspondence courses.* (1) VA will not approve the enrollment of an individual under 10 U.S.C. Chapter 1606 or 38 U.S.C. Chapter 30, 32, or 35 in a correspondence course or the correspondence portion of a correspondence-residence course unless the course is accredited and meets the requirements of §§ 21.4253, 21.4256, and 21.4279, as appropriate.

(2) VA will not approve the enrollment of an eligible child under 38 U.S.C. Chapter 35 in a correspondence course or the correspondence portion of a correspondence-residence course.

(Authority: 38 U.S.C. 3534(b))

(f) *Alternative teacher certification program.* VA will not approve the enrollment of an eligible person under 38 U.S.C. Chapter 35 in an alternative teacher certification program unless that program is offered by an institution of higher learning as defined in § 21.4200(h).

(Authority: 38 U.S.C. 3452(c), 3501(a)(6))

(g) *Independent study.* (1) Effective October 29, 1992, VA may pay educational assistance to a veteran who is enrolled in a nonaccredited course or unit subject offered entirely or partly by independent study only if—

(i) Successful completion of the nonaccredited course or unit subject is required in order for the veteran to complete his or her program of education; and the veteran—

(A) Was receiving educational assistance on October 29, 1992, for pursuit of the program of education of which the nonaccredited independent study course or unit subject forms a part, and

(B) Has remained continuously enrolled in that program of education